

**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]  
**To:** Fugh, Justina[Fugh.Justina@epa.gov]  
**From:** Ex. 6 - Personal Privacy  
**Sent:** Sat 3/18/2017 1:04:51 AM  
**Subject:** Re: Your Resignation and your ethics obligations

Thank you Justina. I believe the matters on which I will be barred would be:

Cloropyrifas  
Four RFS small refinery exemption requests (names are CBI)

And that's all I can think of. If you discover there are others, please let me know, although I doubt it would be needed as I've fully retired now, Ex. 6 - Personal Privacy

**Ex. 6 - Personal Privacy**

Ex. 6 - Personal Privacy

I'm not going back to

E&E Legal or FME Law or any other organization. When I say retired, I mean it in the tradition way - quit working.

I'll be working on a personal project that has lain dormant for too long, an historical look at ancient stewardship and its transformation through current environmental practices. Boring to many, I'm sure, but at heart I've always been an academic, so to that I return.

Best regards,

David

Sent from my iPad

On Mar 17, 2017, at 8:11 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,

Since you have announced your resignation, David, I have some good news for you. You are now excused from having to file the public financial disclosure report altogether because you will not have served in a designated position for more than 60 days in this calendar year. Also, this means that didn't have to sign the Trump ethics pledge, so I will void that document after your last day.

With regard to your post-employment obligations under 18 USC 207, you will be subject only to the permanent restriction set forth at 18 USC 207(a)(1). Under this provision, you are prohibited forever from representing a third party in an appearance before or communication to, with the intent to influence, any member of the United States government on a particular matter involving specific parties in which they participated personally and substantially while a government employee if the United States still has an interest in the matter. However, this restriction does not prohibit providing "behind the

scenes" assistance (except for attorneys who are subject to their own bar rules). And please note that, in some cases, the District of Columbia may be considered a federal entity under this provision.

If you worked on a "particular matter involving specific parties," then you can't represent another entity back to the government on that same matter. Examples of such matters include an investigation, application, request for a ruling or determination, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding. The term does not include a rulemaking or other particular matter of general applicability, but would include a notice of intent that is specific to one chemical, for example. Even if a post-employment communication or appearance concerns the same particular matter, the representational bar does not apply unless the United States is a party or has a direct and substantial interest in that matter at the time of the post-employment representation.

If you have any questions about your ethics obligations, please feel free to contact me at any time.

Best regards,

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**To:** Schnare, David[schnare.david@epa.gov]; Fugh, Justina[Fugh.Justina@epa.gov]  
**From:** Minoli, Kevin  
**Sent:** Mon 3/6/2017 2:38:59 PM  
**Subject:** Need to know this morning: David and the CWRule Litigation

David and Justina- Can you please remind me whether David is recused from the litigation over the Clean Water Rule? Thanks. Kevin

Kevin S. Minoli  
Acting General Counsel  
Office of General Counsel  
US Environmental Protection Agency  
Main Office Line: 202-564-8040

**To:** **Ex. 6 - Personal Privacy**  
**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Sat 3/18/2017 1:23:52 AM  
**Subject:** RE: Your Resignation and your ethics obligations

Thanks for the reply and enjoy your retirement.  
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the  
zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** **Ex. 6 - Personal Privacy**  
**Sent:** Friday, March 17, 2017 9:05 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>  
**Subject:** Re: Your Resignation and your ethics obligations

Thank you Justina. I believe the matters on which I will be barred would be:

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Best regards,

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Sent from my iPad

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**To:** Schnare, David[schnare.david@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Wed 3/15/2017 8:55:11 PM  
**Subject:** Your Resignation and your ethics obligations

Hi there,

Since you have announced your resignation, David, I have some good news for you. You are now excused from having to file the public financial disclosure report altogether because you will not have served in a designated position for more than 60 days in this calendar year. Also, this means that didn't have to sign the Trump ethics pledge, so I will destroy that document after your last day.

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Justina

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**To:** Schnare, David[schnare.david@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Thur 3/9/2017 2:10:42 AM  
**Subject:** reminder about ethics

Hi there,

1) President's Ethics Pledge

As you know, on January 28, 2017, President Donald J. Trump issued an Executive Order on Ethics Commitments for all political appointees in his administration that contains additional restrictions during and after your federal service. You were required to sign this pledge, which you have done (thanks!). Here is a reminder about the significant points of the Executive Order:

*If you were a federally registered lobbyist in the previous 2 years --*

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ For the next 2 years, you will not participate in any particular matter on which you lobbied within the previous 2 years and you will not participate in the specific issue area in which that particular matter falls.

*While you are a federal employee --*

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ You cannot accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions, so ask an ethics official for guidance, early and often.
- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ **For 2 years** from the date of your appointment, you will not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former client(s), including regulations and contracts; and
- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ Any hiring or other employment decisions you make will be based on the candidate's qualifications, competence and experience.

*After you leave federal service --*

- ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ For 5 years, you will not engage in any lobbying activities with respect to the



agency in which you were appointed to serve;

- ☐ ☐ ☐ ☐ ☐ ☐ For the remainder of the Administration, you will not engage in lobbying activities with respect to any covered executive branch official or non-career SES employee; and

- ☐ ☐ ☐ ☐ ☐ ☐ For the rest of your life, you will not engage in any activity on behalf of a foreign government or foreign political party as their “agent” requiring registration under the Foreign Agents Registration Act of 1938 and defined at 22 U.S.C. § 611(c) (as those terms were defined as of 1/20/17).

Finally, you agree that the terms of the ethics pledge are binding upon you.

2) Thanks for making progress on your new entrant financial disclosure report, but I notice that we returned it to you for more changes on 2/3/17. PLEASE help us by addressing our questions so that we can certify your report.

3) I did not receive a signed recusal statement for you. Given the ethics pledge, though, I have to revise it anyway to address your firm/clients. So look for that soon.

Cheers,  
Justina

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zip code) | phone 202-564-1786 | fax 202-564-1772

**To:** Schnare, David[schnare.david@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Mon 3/6/2017 3:21:11 PM  
**Subject:** Re: Need to know this morning: David and the CWRule Litigation

If so, then no recusal necessary (under bar rules, impartiality or Trump pledge) for Clean Water Rule litigation.

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**From:** Schnare, David  
**Sent:** Monday, March 6, 2017 10:05 AM  
**To:** Minoli, Kevin  
**Cc:** Fugh, Justina  
**Subject:** Re: Need to know this morning: David and the CWRule Litigation

Neither FME Law nor E&E Legal filed on WOTUS

dschnare

Sent from my iPhone

> On Mar 6, 2017, at 9:39 AM, Minoli, Kevin <Minoli.Kevin@epa.gov> wrote:  
>  
> David and Justina- Can you please remind me whether David is recused from the litigation over the Clean Water Rule? Thanks. Kevin  
>  
> Kevin S. Minoli  
> Acting General Counsel  
> Office of General Counsel  
> US Environmental Protection Agency  
> Main Office Line: 202-564-8040

**To:** Schnare, David[schnare.david@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Fri 2/10/2017 11:32:43 PM  
**Subject:** an updated version of your recusal statement  
[draft recusal statement 2.docx](#)

Hi there,

In working through the recusal situation for Justin Schwab, I thought to apply some of the provisions to your recusal as well. See attached revised version. You can instead decide that you want to list all of the clients but this version allows you to self-monitor.

Also, we have received a congressional inquiry into why your personal social media pages have not yet been updated to reflect your resignations. Could you please update that information and then confirm to me that you've done so?

Thanks,  
justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308  
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zip code) | phone 202-564-1786 | fax 202-564-1772

**To:** Schnare, David[schnare.david@epa.gov]  
**From:** Fugh, Justina  
**Sent:** Tue 2/7/2017 2:31:27 AM  
**Subject:** approval of outside activity; draft recusal statement  
[outside activity approval.pdf](#)  
[draft recusal statement.docx](#)

Hi there,

Here's the approval of your outside activity. Also, you'll need a recusal statement for the various organizations from which you've taken a leave of absence but not resigned. Please take a look at the draft statement and let me know if you have any questions. If not, then please print it out, sign and date it, then return to me.

Thanks,  
Justina

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North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

FEB 06 2017

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity

FROM: Justina Fugh *Justina Fugh*  
Alternate Designated Agency Ethics Official

TO: David Schnare  
Special Advisor  
Office of the Administrator

Kevin Minoli, Designated Agency Ethics Official, received your request of January 15, 2017, in which you indicated you want to engage in certain uncompensated outside activity upon becoming a federal employee. In making your request for approval of the outside activity, you followed the format set forth at 5 CFR § 6401.103. In our conversation of January 18, 2017, you updated your request to reflect your decision to withdraw from certain outside activities but reiterated that you wish to continue to provide legal services on behalf of the Free Market Environmental Law Clinic in *Energy & Environment Legal Institute v. Arizona Board of Regents*. Because you will be practicing a profession, EPA's supplemental ethics rules at 5 CFR 6401.103 require that you seek approval from your ethics official.

You are currently a noncareer SES appointee at EPA, which means that you are a "covered noncareer employee" subject to the outside earned income limitations set forth at 5 CFR § 2635.804. Under this provision, you cannot receive any compensation for, among other things, practicing a profession that involves a fiduciary relationship or affiliating with or being employed by a firm that provides professional services involving a fiduciary duty. But because you will not be compensated for this activity, you comply with this limitation.

Therefore, based on the information you have provided, I am approving your request to provide legal services in the above referenced case, provided that you abide by the applicable ethics rules set forth below:

### Representation back to the United States

Don't forget, you are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. See 18 USC §§ 203 and 205. In your outside capacity, you cannot contact or represent back to any US government official on behalf of the clinic or your client in connection with any matter in which the United States is a party or has a direct and substantial interest.

### Misuse of Position

You cannot use your EPA position, title or affiliation in connection with the outside activity. See 5 CFR § 2635.807(b). Please do not use Agency equipment, including phones, email address, workspace, computer, and time, in connection with this outside activity.

\* \* \* \* \*

As always, if you have any questions, please feel free to contact me at 564-1786.

**To:** Schnare, David[schnare.david@epa.gov]; Middleton, Brandon  
(ENRD) (b) (6)  
**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]; Fugh, Justina[Fugh.Justina@epa.gov]  
**From:** Minoli.Kevin@epa.gov  
**Sent:** Fri 3/3/2017 5:40:39 PM  
**Subject:** RE: CPP litigation

Hi David- I want to inform you that we received an inquiry from the Department of Justice regarding whether your recusal obligations related to CPP litigation applied to this action. Because the specific party action here is litigation over the denial of petitions for reconsideration of the CPP it is possible that they do not. However, we need to consider the fact that the motion as issue also related to a matter you are recused from, and ascertain whether any entities for which you have a covered relationship under the ethics rules or which are specified on Trump Administration Ethics Pledge are parties in this new litigation. If you could please contact Justina and I today we can work through this quickly and advise you, the Chief of Staff, and DOJ of the result. Until then, however, I advise that you not engage on this new litigation.

**Kevin S. Minoli**

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

**From:** Schnare, David  
**Sent:** Wednesday, March 01, 2017 5:23 PM  
**To:** Middleton, Brandon (ENRD) (b) (6)  
**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>  
**Subject:** CPP litigation

Brown discussed this with Minoli and Ex. 5 - Deliberative Process  
Ex. 5 - Deliberative Process

dschnare

Kevin S. Minoli  
Acting General Counsel  
Office of General Counsel  
US Environmental Protection Agency  
Main Office Line: 202-564-8040



**To:** Schnare, David[[schnare.david@epa.gov](mailto:schnare.david@epa.gov)]; Middleton, Brandon (ENRD) (b) (6)  
**Cc:** Jackson, Ryan[[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)]; 'Fugh, Justina (Fugh.Justina@epa.gov)'[[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)]  
**From:** Minoli, Kevin  
**Sent:** Fri 3/3/2017 8:46:11 PM  
**Subject:** RE: CPP litigation

David, Ryan, and Brandon- David did call me right away and we discussed the matter. Because his former employer/client did file petitions for review over the agency's denial of their petitions for reconsideration (after David was no longer engaging with them on matters related to EPA), the Trump Administration Ethics Pledge prohibits his participation in this matter. Because the Trump Pledge resolves the issue, we need not reach the question of whether his participation in the matter would also be prohibited by the ethics regulations had there been a request for an impartiality determination to participate.

Ryan,

#### Ex. 5 - Deliberative Process

## Ex. 5 - Deliberative Process

**Ex. 5 - Deliberative Process** I would be happy to discuss by phone if you have questions or concerns.

Thanks, Kevin

**Kevin S. Minoli**

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

**From:** Minoli, Kevin  
**Sent:** Friday, March 03, 2017 12:41 PM  
**To:** Schnare, David <schnare.david@epa.gov>; Middleton, Brandon (ENRD) <(b) (6)>  
**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>; Fugh, Justina (Fugh.Justina@epa.gov) <Fugh.Justina@epa.gov>  
**Subject:** RE: CPP litigation

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Thanks, Kevin

**Kevin S. Minoli**

Acting General Counsel

Office of General Counsel

US Environmental Protection Agency

Main Office Line: 202-564-8040

**From:** Schnare, David  
**Sent:** Wednesday, March 01, 2017 5:23 PM  
**To:** Middleton, Brandon (ENRD) <(b) (6)>

**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>  
**Subject:** CPP litigation

Brown discussed this with Minoli and

**Ex. 5 - Deliberative Process**

**Ex. 5 - Deliberative Process**

dschnare

**To:** Schnare, David[schnare.david@epa.gov]; Middleton, Brandon (ENRD) (b) (6)  
**Cc:** Jackson, Ryan[jackson.ryan@epa.gov]; Fugh, Justina (Fugh.Justina@epa.gov)[Fugh.Justina@epa.gov]  
**From:** Minoli, Kevin  
**Sent:** Fri 3/3/2017 5:41:17 PM  
**Subject:** RE: CPP litigation

Hi David- I want to inform you that we received an inquiry from the Department of Justice regarding whether your recusal obligations related to CPP litigation applied to this action. Because the specific party action here is litigation over the denial of petitions for reconsideration of the CPP it is possible that they do not. However, we need to consider the fact that the motion as issue also related to a matter you are recused from, and ascertain whether any entities for which you have a covered relationship under the ethics rules or which are specified on Trump Administration Ethics Pledge are parties in this new litigation. If you could please contact Justina (564-1786) and/or me (564-5551) today we can work through this quickly and advise you, the Chief of Staff, and DOJ of the result. Until then, however, I advise that you not engage on this new litigation. Again, I want to be clear that we have not reached a conclusion as to whether you do have recusal obligations in the new matter and reassure you that we can reach a conclusion quickly once you reach out to OGC Ethics.

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**Kevin S. Minoli**

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**Sent:** Wednesday, March 01, 2017 5:23 PM  
**To:** Middleton, Brandon (ENRD) (b) (6)  
**Cc:** Jackson, Ryan <jackson.ryan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>  
**Subject:** CPP litigation

Brown discussed this with Minoli and

**Ex. 5 - Deliberative Process**

**Ex. 5 - Deliberative Process**

dschnare

**David Schnare OA**



**Certified by:** Justina Fugh  
**Certificate Dated:** 01/18/2017  
**Certificate ID Number:** JFUH-AJ6TEN  
**Full Organization:** OA

According to the EPA Domino Directory,  
Contact your local Help Desk if this  
organizational information is not correct.